

### **REMARKS**

The foregoing amendments and the remarks that follow are meant to impart precision to the claims, and more particularly point out the invention, rather than to avoid prior art.

Claims 1, 4, 5, 8-10, 21, 24, 25, 28-30, 46-48 and 50 are pending in the application.

Claims 1, 4, 5, 8-10, 21, 24, 25, 28-30, 46-48 and 50 were rejected. Claims 1, 21, and 46 have been amended. No new matter has been added.

#### **35 U.S.C. 101**

Claims 21, 24, 25 and 28-30 were rejected under 35 U.S.C. 101 because the Examiner contended the claimed invention is directed to non-statutory subject matter. Independent claim 21 has been amended to recite “nontransitory”. Accordingly, Assignee thanks the Examiner for the suggested amendment. The claims now clearly recite statutory subject matter and the rejection has been overcome.

#### **35 U.S.C. 103**

Claims 1, 4-5, 8, 10, 21, 24-25, 28, 30, 46-48 and 50 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. 2001/0044751 (“Pugliese”), in view of U.S. Patent Application Publication No. 2001/0027481 (“Whyel”) and further in view of U.S. Patent No. 6,798,753 (“Doganata”) and further in view of U.S. Patent No. 6,076,093 (“Pickering”) and further in view of U.S. Patent No. 6,917,610 (“Kung”) further in view of U.S. Patent Application Publication No. 2002/0010616 (“Itzhaki”). Claims 9 and 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over Pugliese, in view of Whyel, further in view of Doganata further in view of Pickering further in view of Kung further in view of Itzhaki and further in view of U.S. Patent No. 6,477,246 (“Dolan”). All of the rejections are respectfully traversed.

The Prior Art Fails To Disclose: “determining, by the data processing system, a highest ranking service provider in the relevant field of service as an alternative to the selected service provider when the selected service provider is unavailable”

As amended, independent claim 1 recites, inter alia: “determining, by the data processing system, a highest ranking service provider in the relevant field of service as an alternative to the

selected service provider when the selected service provider is unavailable.” Claims 21 and 46 recite similar claim features. This claim feature is supported at, for example, at paragraph 11 of the specification. None of the cited prior art references teaches these claim features.

The Examiner cited paragraph 38 of Itzhaki. Figures 9 and 10 of Itzhaki, which are discussed in paragraph 38, allow the *user* to “Find a Doctor”. Itzhaki discloses a conventional technique that unremarkably allows a user to select a counselor. In pertinent part, Itzhaki describes its system, as follows:

An example of a web page used for finding a counselor is depicted in FIG. 9. These categories include area of specialization, language spoken, and the counselor’s gender. This enables the system to find *a list of counselors best matched to the client’s needs*. After the client submits the page, the system returns another web page, an example of which is depicted in FIG. 10, to the client that displays *a list of available counselors* for the categories selected by the user. This page depicts the counselor’s name, degree, ID number, status, and includes links for the client to view the counselor’s profile and schedule, and to schedule an appointment. The status buttons indicate whether the counselor is online and available (white buttons), online but in session (cross hatched button), or offline (black buttons). As shown in the figure, the counselors 1001 are online and available, counselor 1002 is online and in session, and counselors 1003 are offline. Selecting the “Schedule” button displays that counselor’s schedule page to the client. An exemplary schedule page is depicted in FIG. 11. The schedule page can also include those channels over which the counselor is available. To schedule an appointment, the client selects either the “Talk Now” link for an immediate appointment, or else enters the date, time, and desired duration for a future appointment.

Itzhaki, para. 38 (emphasis added). Thus, in the Itzhaki system, some preferences of the user are used to create a list of suitable counselors from which the user selects a counselor.

Itzhaki falls well short of the instant claim feature for at least two reasons. First, Itzhaki fails to disclose or otherwise contemplate a selected service provider who becomes *unavailable* at an appointment time specified by a service seeker, as claimed. In this regard, Itzhaki is narrowly focused on the initial scheduling of an appointment with a counselor by a user. Nothing in Itzhaki’s disclosure extends to contemplate a different situation where the selected counselor later become *unavailable*, much less determining a *highest ranking service provider* in the relevant field of service *as an alternative to the selected service provider* when the selected service provider is unavailable, as claimed.

Second, the Itzhaki system provides for a listing of possible counselors based on criteria provided by a user. The Itzhaki system ultimately *relies on the user* to select the particular counselor from a listing of numerous counselors. Itzhaki stops there and does not go further to disclose, much less approach, the claim feature. According to the claim feature, the highest ranking service provider is determined, *not* by the user, but rather the *data processing system*.

Accordingly, claims 1, 21, and 46, as well as their dependent claims, are patentable.

The Prior Art Fails To Disclose: “wherein the highest ranking service provider is identified, by the data processing system, based on a quantitative rating system”

As amended, independent claim 1 recites, inter alia: “wherein the highest ranking service provider is identified, by the data processing system, based on a quantitative rating system.” Claims 21 and 46 recite similar claim features. This claim feature is supported at, for example, paragraph 81 of the specification and Figures 3-5 of the specification and the disclosure of “Rating” therein. None of the cited prior art references teaches these claim features.

As set forth above, paragraph 38 of Itzhaki does not disclose a highest ranking service provider. Further, as perhaps the closest, albeit still completely inapposite, cited prior art reference, Itzhaki also fails to disclose the instant claim feature.

The Itzhaki system discloses certain types of information associated with counselors, as follows:

[0038] A user who is a registered client of the system can access the system by either the web site or a telephone call in order to be connected to a counselor. Via the web site, the client selects “Find a Doctor”, after which the system displays a page displaying various counselor categories. An example of a web page used for finding a counselor is depicted in FIG. 9. These categories include *area of specialization, language spoken, and the counselor’s gender*. This enables the system to find a list of counselors best matched to the client’s needs.

Itzhaki, para. 38 (emphasis added). In particular, Itzhaki discloses specialization area, language ability, and gender of counselors as information to allow users to select a suitable counselor. However, nothing in Itzhaki discloses any kind of *rating system*, much less an *identification* of a highest ranking service provider based on a *quantitative rating system*, as claimed.

Accordingly, claims 1, 21, and 46, as well as their dependent claims, are patentable.

The Prior Art Fails To Disclose: “if at the service seeker specified appointment time the selected service provider is unavailable for the first real time communication connection, identifying, by the data processing system, a relevant field of service of the selected service provider based on the information stored in the database”

As amended, independent claim 1 recites, inter alia: “if at the service seeker specified appointment time the selected service provider is unavailable for the first real time communication connection, identifying, by the data processing system, a relevant field of service of the selected service provider based on the information stored in the database.” Claims 21 and 46 recite similar claim features. None of the cited prior art references teaches these claim features.

The Examiner cited paragraph 38 of Itzhaki. As discussed above, Itzhaki is focused on allowing a user to select a counselor from a larger listing of counselors and the user’s scheduling an appointment with the counselor selected by her. The entirely different notion of a selected service provider who later becomes unavailable, as claimed, is beyond the contemplation of Itzhaki. In the Itzhaki system, availability of counselors is discussed merely in the context of allowing counselors to set their availability status, as follows:

[0035] Even after a counselor has logged into the system and marked him or herself as available, the service provides affiliated counselors the ability to manage their availability, a process depicted in FIG. 3. This can be done either by telephone or over the web. Via the web, the counselor first logs in to the system at step 301 and authenticates him or herself by entering a password. The counselor then selects a manage availability option at step 302, after which the system presents at step 303 a table displaying the counselor’s availability for all available channels. An example of such a table is depicted in FIG. 5. The counselor can then modify his or her availability status for each channel.

Itzhaki, para. 35 (emphasis added).

Nothing in Itzhaki discloses what happens, if anything, when a selected service provider become unavailable because the scope of Itzhaki’s disclosure does not extend that far. Itzhaki has no reason to, and in fact does not, disclose the identification of a relevant field of service of a selected service provider *if the selected service provider is unavailable*, as claimed.

Accordingly, claims 1, 21, and 46, as well as their dependent claims, are patentable.

**CONCLUSION**

It is respectfully submitted that all of the Examiner's objections have been successfully traversed and that the application is now in order for allowance. Accordingly, reconsideration of the application and allowance thereof is courteously solicited.

Authorization is hereby given to charge our Deposit Account No. 50-2638 for any charges that may be due. Furthermore, if an extension is required, then such an extension is hereby requested.

Respectfully submitted,

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